



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS - EAST
DIRECTOR, FIELD OPERATIONS – WEST
DIRECTOR, TECHNICAL GUIDANCE
DIRECTOR, APPEALS PROCESSING SERVICES

FROM: Diane S. Ryan /s/ *Diane S. Ryan*
Director, Technical Services

SUBJECT: INTERIM GUIDANCE
Appeals Review Panels under the Mutual Agreement
Procedure, Canada-United States Income Tax Convention

The Canadian and United States Competent Authorities (CAs) have agreed to establish principles, guidelines, and procedures to resolve disagreements in respect of the underlying facts and circumstances in cases referred to them under the Mutual Agreement Procedure (MAP) article of the *Canada-United States Income Tax Convention (1980)* as amended from time to time (referred to as "Convention"). The Internal Revenue Service formally announced the program, which includes requests for Appeals Review Panels under the Convention. Click on the link for the related Memorandums of Understanding: [Competent Authority Agreements](#).

It is expected that Appeals Review Panels will be requested by the CAs to determine underlying facts and circumstances in Competent Authority, Advance Pricing Agreement, and simultaneous Appeals and Competent Authority cases. The purpose of this memorandum is to provide interim guidance on Appeals Review Panels until appropriate sections of the Internal Revenue Manual (IRM) are revised. This Interim Guidance memorandum should be distributed to all Appeals team case leaders, Appeals officers, and Appeals managers.

IRM 8.7.3.7.1 will be revised to add the attached Technical Procedures and Guidelines. These procedures will be incorporated within one year from the date of this memorandum.

If you have any questions concerning this Guidance, please call Robert Doran, Director, Tax Policy and Procedure (Exam) or J. W. Wyatt, Team Case Leader.

Attachment

cc: www.irs.gov

ATTACHMENT

Appeals Review Panels Under the Mutual Agreement Procedure Canada-United States Income Tax Convention Appeals Technical Procedures and Guidelines

SECTION 1: OVERVIEW

01. Following are the Appeals Technical Procedures and Guidelines for Appeals Review Panels under the Canada-United States Income Tax Convention (1980) as amended from time to time (referred to as “Convention”). The Technical Procedures and Guidelines are to be used by Appeals personnel.
02. The United States Competent Authority (CA) assists taxpayers with respect to matters covered in the Mutual Agreement Procedure (MAP) provisions of tax treaties.
 - A. An income tax treaty generally permits taxpayers to request CA assistance when they consider actions of the United States, the treaty country, or both, result or will result in taxation contrary to the provisions of the treaty.
 - B. Income tax treaties generally permit taxpayers to request assistance, for example, to relieve economic double taxation arising from an allocation under §482 or an equivalent provision under the laws of a treaty country.
 - C. For CA procedures, see Revenue Procedure 2002-52, 2002-2 C.B. 242, or any successor revenue procedure. Click on link: [Revenue Procedure 2002-52](#).
03. The Canadian and United States CAs have agreed to establish principles, guidelines, and procedures to resolve disagreements in respect of the underlying facts and circumstances in cases referred to under the MAP article of the Convention. The CAs established the binding procedures to determine the underlying facts and circumstances of a specific MAP case where factual disagreements persist. The procedures involve the Appeals organizations of Canada Revenue Agency (CRA) and the United States Internal Revenue Service (IRS), respectively. Click on link for the related Memorandums of Understanding and Next Steps: [Competent Authority Agreements](#).
04. It is expected that Appeals Review Panels will be requested by the CAs to determine underlying facts and circumstances in Competent Authority, Advance Pricing Agreement, and simultaneous Appeals and Competent Authority cases.

SECTION 2: APPEALS REVIEW PANEL PROCEDURES

01. In the event the CAs are unable to agree on the underlying facts and circumstances of a specific MAP case within six months after the first face-to-face negotiating meeting for the case, any facts and circumstances issues will be referred to an Appeals Review Panel.
02. A facts and circumstances issue presented to the Appeals Review Panel may involve a taxpayer request that the CAs attempt to resolve the issue for certain subsequent taxable periods if the same issue continues in those periods. See Section 7.06 of Revenue Procedure 2002-52.
03. Any CA referral requests for an Appeals Review Panel will be in writing and sent to the CRA and IRS Chief, Appeals for approval. The request will detail the factual disagreements and the respective views of the CAs.
 - A. For IRS Appeals, Tax Policy and Procedure (Exam) will coordinate its approval and assignment with Technical Guidance (TG) and the Fast Track Settlement program manager.
 - B. Tax Policy and Procedure (Exam) will prepare a memorandum for signature by the Director, Technical Services to notify the United States and Canada in writing of their acceptance (with a list of participants) or rejection of a referral within 30 days of the date the request was made by the CAs. If the referral is not accepted, the reasons for rejection must be provided.
04. For approved referral requests, the CRA and IRS Appeals organizations will each appoint a member of the organization with decision-making authority (referred to as the "Official") to participate in an Appeals Review Panel proceeding.
 - A. Appropriate IRS Appeals personnel, including specialists and their managers, may support the Appeals Official and participate in the Appeals Review Panel proceedings, which include meetings, conference call discussions, and providing necessary information to achieve a comprehensive understanding of the issues.
 - B. Unless the CAs agree otherwise, an Appeals Official or member appointed to the Panel must not have had any previous involvement in an audit of the subject taxpayer, an appeal, or simultaneous Appeals/Competent Authority request filed by such taxpayer for the tax years under CA jurisdiction.
 - C. The CRA and the IRS Appeals Official will update the Appeals Review Panel member list of participants as necessary and exchange it with each other.

- D. The approved CA referral request will be date stamped by Tax Policy and Procedure (Exam), and a photocopy will be provided by the assigned Appeals Official to Appeals Processing Services for input on the Appeals Centralized Database System (ACDS). The ACDS feature code "CA" will be used for Competent Authority cases.
05. The CAs will forward a written submission detailing the facts and circumstances disagreement, the issue positions of each CA, and CA contacts to the CRA and IRS Appeals Official for their consideration prior to the opening Appeals Review Panel conference.
- A. While the Appeals Review Panel is a government-to-government process, the Panel may request supplementary information/representation from any party possessing relevant information.
 - B. IRS Appeals Review Panel members will not disclose their processes or findings to subject taxpayer of a specific MAP case, the taxpayer's representatives, or any persons other than the CAs.
 - C. Subject taxpayer of a specific MAP case, the taxpayer's representatives, and the CAs are not allowed any ex parte contacts with Appeals Review Panel members unless at the request of the Panel.
 - D. If any ex parte contact occurs with an IRS Appeals Review Panel member, the Panel member must immediately disclose such contact to the CRA and IRS Appeals Officials.
06. If an Appeals Review Panel requires face-to-face discussions, meetings will be held in Ottawa or Washington, D.C. on an alternating basis.
07. The targeted timeframe for an Appeals Review Panel to conclude its work and render its decision is 150 days from the date a referral request is required or agreed to be made. The Appeals Review Panel may ask the CAs to extend the 150-day timeframe. Either CA may unilaterally grant an extension.
08. If an issue is resolved during the Appeals Review Panel, the decision will be incorporated into a joint written report submitted to the CAs (see Section 3 below).
09. For simultaneous Appeals and CA requests under Section 8 of Revenue Procedure 2002-52, the taxpayers will be informed that if the CAs fail to agree or the taxpayers do not accept the mutual agreements reached, the taxpayers will be permitted to refer the issue to IRS Appeals for further consideration in the administrative process.

SECTION 3: APPEALS REVIEW PANEL DECISIONS

01. If a facts and circumstances issue is resolved during an Appeals Review Panel process, a joint written report will be prepared.
 - A. The Panel report will:
 1. Identify the MAP case.
 2. Summarize the issues causing factual disagreement.
 3. Provide the decision regarding underlying facts and circumstances in dispute.
 4. Be signed by the CRA and Appeals Officials.
 - B. The Appeals Review Panel will send a copy of the Panel report to the CAs.
 - C. The CAs will follow the decision of the Appeals Review Panel regarding their findings in respect of the underlying facts and circumstances of the specific MAP case.
02. If a facts and circumstances issue is not resolved, the IRS Appeals Official will prepare a brief Appeals Case Memorandum (ACM) and the CRA Official will prepare a summary of its findings. Both documents will be forwarded to the CAs.
 - A. IRS Appeals will not share the ACM with the taxpayers.
 - B. Unless the CAs agree otherwise, no members of the Appeals Review Panel may participate in any subsequent resolution of the subject MAP case.
03. Established Appeals closing procedures will be followed for a CA work unit. The Appeals Official will prepare Form 5402, Appeals Transmittal and Case Memo, Appeals Review Panel Report, and include the following modifications:
 - A. In "Remarks" state: "This is a Competent Authority Case under MEMORANDUM OF UNDERSTANDING BETWEEN THE COMPETENT AUTHORITIES OF CANADA AND THE UNITED STATES REGARDING FACTUAL DISAGREEMENTS UNDER THE MUTUAL AGREEMENT PROCEDURE dated June 3, 2005."
 - B. In "Remarks" show Closing Codes as: 14 – Fully Resolved; 15 – Not Resolved; 16 – Partially Resolved; or 20 – Withdrawn for Procedural Reasons.
 - C. Appeals Officials and team members shall use ACDS to track cases. The closed office file will be mailed to J. W. Wyatt in St. Louis Appeals for centralized filing.

For further information, contact Team Case Leader J. W. Wyatt or TG Appeals Team Manager Byron Bray.